

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ARUBA HOTEL ENTERPRISES N.V.,	:
	:
Plaintiff,	:
	:
v.	:
	:
MICHAEL BELFONTI, BELFONTI HOLDINGS:	:
LLC, and BELFONTI CAPITAL PARTNERS,	:
LLC,	:
	:
Defendants.	:
	:
----- X	

Civil Action No.  
3:07 CV 7564 (PAC)

**ORAL ARGUMENT REQUESTED**

**DECLARATION OF MICHAEL T. MERVIS**

I, MICHAEL T. MERVIS, declare as follows:

1. I am a member of Proskauer Rose LLP, counsel for plaintiff Aruba Hotel Enterprises, N.V. ("AHE") in the above-captioned matter. I am fully familiar with the facts and circumstances of this matter and submit this Declaration in opposition to Defendants' motion to dismiss AHE's Complaint.

2. On July 23, 2007, AHE commenced an action in Aruba against Diamond Gaming Corporation, N.V. ("Diamond Gaming"). It is my understanding that Diamond Gaming is beneficially owned and controlled by defendant Michael Belfonti ("Belfonti"). This litigation is essentially a landlord-tenant action in which AHE sought (and seeks) to have Diamond Gaming terminated as the operator of the casino that is located in a hotel owned by AHE. Both parties to this litigation -- AHE and Diamond Gaming -- are Aruban entities, and the lease agreement at issue in the case explicitly states that it is governed by Aruban law.

3. On July 24, 2007, AHE's current beneficial owner, Petra Fund REIT Corp. ("Petra"), commenced an action in New York State Supreme Court against, *inter alia*, Belfonti and a number of corporate entities that I understand he controls. In this action Petra seeks, *inter alia*, to enforce a personal guaranty against Belfonti and asserts a claim for breach of a loan agreement, both of which are governed by New York law. The guaranty specifies New York as the forum for litigation of disputes.

4. AHE filed this action on Friday, August 24, 2007, seeking declaratory relief with respect to claims by defendants Belfonti Holdings, LLC ("Belfonti Holdings") and Belfonti Capital Partners, LLC ("BCP") that they had made "loans" to AHE. The following Monday, August 27, 2007, AHE commenced a similar action against Belfonti and non-parties MCR Property Management Inc. ("MCR") and CEB Irrevocable Trust ("CEB") in the District of Connecticut, because it did not believe, at that time, that it had a basis for asserting personal jurisdiction over MCR and CEB in New York.

5. When this action and the action in the District of Connecticut were filed, AHE was aware that Belfonti Holdings, BCP, MCR and CEB had threatened to file a lawsuit against AHE in Aruba on August 24, 2007. AHE and its counsel in the United States and in Aruba were, however, not aware that a case had actually been filed in Aruba on August 24. In fact, AHE did not receive notice of the Aruban litigation until September 7, 2007, when the petition in that case was served on AHE.

6. Annexed hereto as Exhibit A are excerpts from a loan agreement between AHE and WIBC Aruba N.V., dated May 3, 2006.

7. Annexed hereto as Exhibit B is a copy of the Affidavit of Hendrik S. Croes, dated October 16, 2007, which was previously filed in the above-described New York State Court litigation brought by Petra.

Executed this 2<sup>nd</sup> day of January, 2008, in New York, New York. I declare under penalty of perjury that the foregoing is true and correct.

/s/ Michael T. Mervis